



ATTORNEY GENERAL OF TEXAS  
G R E G   A B B O T T

June 28, 2005

Ms. Jill Warren  
Bracewell & Giuliani, LLP  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701

OR2005-05709

Dear Ms. Warren:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 227227.

Advocacy, Inc. ("Advocacy"), which you represent, received a request for information related to personal visits made by Advocacy representatives to any detention facilities in the State of Texas from January 1, 2002 through April 1, 2005. You assert that Advocacy is not a governmental body subject to the Act. In the alternative, you claim that the requested information is excepted from disclosure under sections 552.101 and 552.107 of the Government Code. We have considered your arguments.

Advocacy asserts that it is not a governmental body as defined by section 552.003 of the Government Code. The Act applies to "governmental bodies" as that term is defined in section 552.003(1)(A) of the Government Code. According to that section a "governmental body" is

the part, section, or portion of an organization, corporation, commission, committee, institution, or agency that spends or that is supported in whole or in part by public funds[.]

Gov't Code § 552.003(1)(A)(xii). "Public funds" means funds of the state or of a governmental subdivision of the state. *Id.* § 552.003(5). The determination of whether an entity is a governmental body for purposes of the Act requires an analysis of the facts

surrounding the entity. See *Blankenship v. Brazos Higher Educ. Auth., Inc.*, 975 S.W.2d 353, 360-362 (Tex. App.—Waco 1998, pet. denied). Further, in Attorney General Opinion JM-821 (1987), this office concluded that “the primary issue in determining whether certain private entities are governmental bodies under the [predecessor of] Act is whether they are supported in whole or in part by public funds or whether they expend public funds.” Attorney General Opinion JM-821 at 2 (1987). In Open Records Decision No. 509 (1988), this office concluded that a private nonprofit corporation established under the Job Training Partnership Act and supported by federal funds appropriated by the state was a governmental body for the purposes of the Act. In that case, we analyzed the state’s role under the federal statute and concluded the state acted as more than a simple conduit for federal funds, in part because of the layers of decision-making and oversight provided by the state in administering the programs. *Id.* at 2. The decision noted that federal funds were initially distributed to the state and then allocated among the programs at issue. Citing Attorney General Opinions JM-716 (1987) and H-777 (1976), the decision observed that federal funds granted to a state are often treated as the public funds of the state. Furthermore, in Open Records Decision No. 563 (1990), this office held that “[f]ederal funds deposited in the state treasury become state funds.” *Id.* at 5 (citing Attorney General Opinions JM-118 (1983); C-530 (1965)).

You inform us that Advocacy is a nonprofit corporation funded by the United States Congress “to protect and advocate for the legal rights of people with disabilities in Texas.” You state that in Texas, Advocacy is the designated state protection and advocacy system, which was created by federal law.<sup>1</sup> You further inform us that Advocacy’s general support is provided by federal funds which flow directly to Advocacy from the federal government. You note that Advocacy receives additional funding for specifically targeted civil legal assistance from three state programs; the Basic Civil Legal Services (“BCLS”), the Interest on Lawyer’s Trust Account (“IOLTA”), and the Crime Victims Civil Legal Services (“CVCLS”).

With respect to Advocacy’s receipt of federal funds, in Open Records Letter No. 2003-8135 (2003), our office previously held that Advocacy is not a governmental body subject to the Act. However, Open Records Letter No. 2003-8135 did not address whether Advocacy is a governmental body with respect to the funding it receives from the BCLS, the IOLTA, or the CVCLS state programs. You contend that while Advocacy does receive funding from these state programs, these funds are specifically targeted for civil legal assistance for Advocacy’s beneficiaries and cannot be used for the general support of Advocacy. You inform us that “Advocacy does not use any BCLS or CVCLS funding for any work that it does in detention facilities[,]” specifically noting that the “BCLS contract states that ‘[f]unds from the Account may not be used for the representation of an individual who is confined to a local, state or federal jail or prison.’”

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<sup>1</sup> See 42 U.S.C. §§ 10801 – 1085 (known as The Protection and Advocacy for Mentally Ill Individuals Act, or “PAMII Act”), *id.* §§ 15041 – 15045 (known as The Developmental Disabilities Assistance and Bill of Rights Act, or “DD Act”).

Additionally, while you acknowledge that some of Advocacy's visits to detention centers "may have been partially funded by grants from the Texas IOLTA program[.]" you contend that these funds are not public, but rather private funds. You state that:

The IOLTA program was established by the Texas Equal Access to Justice Foundation ("TEAJF"), a Texas Non-Profit Corporation created by Order of the Texas Supreme Court in 1984. TEAJF is not a state agency but rather a non-profit corporation.

The IOLTA program allows attorneys to pool short-term or nominal deposits made on behalf of clients or third parties into one account. *See generally, Rules Governing the Operation of the Texas Equal Access to Justice Foundation.* Interest generated by these accounts is dedicated to helping non-profit organizations that provide free civil legal aid to low-income Texans. *Id.* These private funds flow directly from financial institutions to the non-profit corporation TEAJF for distribution to other non-profit corporations. *See id.*

Accordingly, you assert that this funding constitutes private money passing from one non-profit corporation to another. Based on your representations, we agree that Advocacy is not a governmental body subject to the Act with regard to work that it does in detention facilities. *See, e.g.,* Open Records Decision Nos. 602 (portion of Dallas Museum of Art not supported by public funds not governmental body), 510 (1988) (finding that although tuition equalization grant funds are properly characterized as public funds, they do not vest in university, which is simply conduit to pass funds on to students; once students receive funds, they become students' funds so long as students expend them in accordance with requirements of tuition equalization grant program), *see also B.H. Belo Corp. v. Southern Methodist Univ.*, 734 S.W.2d 720 (Tex. App.—Dallas 1987, writ denied) (finding that funds distributed by Southwest Conference to private university members were not public funds, thus private universities were not governmental bodies). Therefore, Advocacy is not required to respond to the present request for information. Because we reach this conclusion, we need not address your alternatively claimed exceptions.<sup>2</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the

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<sup>2</sup> This ruling does not address whether Advocacy is a governmental body with respect to the funding it receives from the BCLS or the CVCLS state programs.

governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Lauren E. Kleine  
Assistant Attorney General  
Open Records Division

LEK/jev

Ref: ID# 227227

c: Honorable Pat Tinley  
County Judge, Kerr County  
700 Main  
Kerrville, Texas 78028